

### **REMARKS**

In response to the Election Requirement of May 7, 2004, applicant herein makes a provisional election with traverse, amends three claims and adds two claims.

On or about June 10, 2004, applicant's representative had a brief telephone conversation with the Examiner to request clarification of the Election Requirement and, particularly, the apparently erroneous statement that no claims were generic. No agreement was reached.

The Examiner has required election between two alleged species, represented by Figures 3 and 4, respectively. Applicant provisionally elects the species of Figure 3 and declares as corresponding thereto claims 1-15 and 17-18. As stated above, this election is made with traverse, for the reasons stated below.

As a preliminary matter, Applicant notes the Election Requirement states "Currently, no claim appears to be generic." Reconsideration is requested. All of the independent claims and many of the dependent claims are generic. The only species claims that read on one but not both of Figs. 3 and 4 are claims 15-16 and 18-19. The embodiments of Figs. 3 and 4 are both covered by claims 1-14 and 17. Hence, those claims are generic. Of course, only claims 15 and 18 cover the embodiment of Fig. 3, while only claims 16 and 19 cover the embodiment of Fig. 4. The Examiner is requested to review the claims, from which it will be apparent that the Office Action is in error.

In any event, the Election Requirement is improper and unfounded. As stated in MPEP §808.01(a), "in order for an election requirement to be proper, there must be a patentable difference between the species that is claimed." The Examiner has not established a patentable difference. Note that the emphasis must be on the claims when making this distinction. The Office Action does not even refer to the claims. Moreover, species are merely an example of possibly "independent" inventions. As stated in MPEP §808.01, "Where the inventions claimed are independent, i.e., where they are not connected in design, operation or effect under the disclosure of the particular application under consideration..., the facts relied on for this conclusion are in essence the reasons for insisting upon restriction. This situation, except for species, is but rarely presented...". However, as stated in MPEP §806.04, inventions are *related* if they have similar modes of operation, functions and effects. Consequently, even species may

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be related. Clearly this is true of the alternative embodiments of Figs. 3 and 4 as claimed. They are related. Perhaps other claims could be drafted to cover Figs. 3 and 4 in ways meriting restriction or election, but not these claims.

Applicant notes that upon the allowance of any of the generic claims, the claims drawn to the non-elected species shall be examined as no longer withdrawn and as fully embraced by the allowed generic claims.

All of claims 1-19 are retained at this time and reconsideration is requested.

### **CONCLUSION**

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

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